In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 650

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-AFL-CIO, PETITIONER

v.

RUSSELL SCOFIELD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Petitioner Union seeks review of an order of the court of appeals denying it leave to intervene in a proceeding brought under Section 10(f) of the National Labor Relations Act (29 U.S.C. 160(f)). The underlying facts are as follows:

Upon charges filed by the respondent employees, the General Counsel of the Board issued a complaint against petitioner Union, alleging that it had violated

Section 8(b)(1)(A) of the Act (29 U.S.C. 158(b)(1)(A)) by fining the employees for failing to adhere to a union rule limiting piece-rate earnings by union members. The Board, after hearing, found that the Union's action did not violate the Act and dismissed the complaint. 145 NLRB No. 9. The employees, pursuant to Section 10(f) of the Act, petitioned the court of appeals to review the Board's dismissal of the complaint. The Union filed a timely motion to intervene in the proceeding, which was not opposed by either the Board or the petitioning employees (Pet. 15, 18-22). The motion was nevertheless denied, first by a single judge, and then, on rehearing, by a panel of the court below. The court, however, granted the Union leave to file a brief as *amicus curiae*. (Pet. 17, 23.)

The question presented is whether, when the Board dismisses an unfair labor practice complaint and the charging party seeks review of the dismissal in the court of appeals, the party against whom the complaint was issued is entitled, upon timely motion, to be permitted to intervene in the proceeding. The Board believes that this question should be answered in the affirmative. For, if the court reverses the Board's dismissal order, the party against whom the complaint was issued stands to incur a liability. Although this would not occur until after a separate judicial proceeding was instituted against that party,[1]

[1] That is, if the Board's dismissal of the complaint were reversed, the Board would have to issue an unfair labor practice order against the respondent and then file a petition to enforce the order under Section 10(e) of the Act.

as a practical matter the second proceeding would be controlled by the facts found and the legal conclusions reached in the first proceeding. The Board believes that these considerations entitle the respondent before it to intervene in a review proceeding brought by the charging party, and therefore has not opposed timely motions to intervene in such circumstances.[2]

Although the question of such intervention is important in the administration of the Act, it has not heretofore presented any serious problem, because the courts of appeals generally have granted timely petitions to intervene (see cases cited Pet. 8, n. 7). The Seventh Circuit, however, has followed a varied pattern, allowing intervention in some cases [3] and denying

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[2] The Board, however, believes that a different conclusion is called for where the Board has found an unfair labor practice, the respondent petitions to review the order issued against it, and the charging party seeks to intervene in the court proceeding. In the latter situation, the Board has generally opposed intervention. For the charging party does not stand to incur any liability, and its only purpose is to help the Board perform a function, i.e., uphold its order, which the Act confers exclusively upon the Board. In this situation intervention has usually been denied, but the charging party has been permitted to participate as *amicus curiae*. See *Aluminum Ore Co.* v. *National Labor Relations Board*, 131 F. 2d 485 (C.A. 7).

[3] See *Kovach* v. *National Labor Relations Board*, 229 F. 2d 138; *Albrecht* v. *National Labor Relations Board*, 181 F. 2d 652; *American Newspaper Publishers Assoc.* v. *National Labor Relations Board*, 190 F. 2d 45, 48-49; *Eko Products Co.* v. *National Labor Relations Board*, No. 12166, unreported order entered February 21, 1958; *Ramsey* v. *National Labor Relations Board*, No. 14336, unreported order entered November 1, 1963.

it in others.[4] Under the circumstances, it seems desirable for this Court to settle the question.

Accordingly, the Board does not oppose the present petition. If it is granted, the Board's brief will discuss the various relevant considerations on both sides of the question.[5]

Respectfully submitted.

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[4] In addition to the instant case, see *Chauffeurs, General Local No. 200* v. *The United States Court of Appeals for the Seventh Circuit,* petition for writ of mandamus denied, 363 U.S. 835; *Cushman Motor Co.* v. *Honorable F. Ryan Duffy,* motion for leave to file petition for writ of mandamus denied, 376 U.S. 948. See, also, *Amalgamated Meat Cutters* v. *National Labor Relations Board,* 267 F. 2d 169 (C.A. 1), certiorari denied, 361 U.S. 863.

[5] The reasons which prompted the Board to oppose the petition in *Cushman Motor Co.,* n. 4, *supra,* do not apply here. In *Cushman,* the motion to intervene was not timely, being filed after judgment had been entered.

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